United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 7605.

FILED MAY 1 - 1940

MACON L. MOYER, Appellant,

v.

FRANK A. CARDILLO, Deputy Commissioner, United States Employees' Compensation Commission, District of Columbia Compensation District, and AMERICAN CASUALTY COMPANY, *Appellees.*

BRIEF FOR APPELLANT.

AUBREY ST. C. WARDWELL,
Attorney for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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FOR THE DISTRICT OF COLUMBIA.

No. 7605.

MACON L. MOYER, *Appellant*,

v.

FRANK A. CARDILLO, Deputy Commissioner, United States Employees' Compensation Commission, District of Columbia Compensation District, and AMERICAN CASUALTY COMPANY, *Appellees*.

BRIEF FOR APPELLANT.

I.

JURISDICTION.

The United States Court of Appeals for the District of Columbia has jurisdiction of this case under the Act of Congress approved February 9, 1893, 27 Stat. 435, Chapter 74, Section 7, as amended by Title 18, Chapter 2, Section 26, of the Code of Laws for the District of Columbia (1929).

This is an appeal from an Order of the District Court of the United States for the District of Columbia (R. 18), dismissing appellant's Petition for Judi-

cial Review of Deputy Commissioner's "Findings of Fact" under Section 21-B of the District of Columbia Workmen's Compensation Act (R. 1), wherein the Deputy Commissioner of the District of Columbia Compensation District of the United States Employees' Compensation Commission, entered an order rejecting appellant's claim for compensation on the ground "That there is no jurisdiction under the District of Columbia Workmen's Compensation Act" (R. 12). Section 21-B of the Longshoreman's and Harbor Worker's Compensation Act (Act of March 4, 1927, 44 Stat. 1424; 33 U. S. C. A., Sec. 901 *et seq.*) made applicable to the District of Columbia by Act of May 17, 1928, 45 Stat. 600, Title 19, Chapter 2, Section 11, D. C. Code (1929) provides as follows:

> "If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal District Court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the Court in such proceedings may run, be served and be returnable anywhere in the United States." * * *

II.

STATEMENT OF THE CASE.

The appellant, Macon L. Moyer, plaintiff below, while working for The Moyer Coal Company (R. 33) who maintained offices at 6301 Belair Road, N. E., District of Columbia (R. 33, 34, 60, 61, 63, 68), suffered injuries arising out of the course of his employment

on the morning of January 10, 1938 at approximately 10:00 A. M., o'clock (R. 45, 46), across the District line in the rear of 5800 Rhode Island Avenue, Prince George's County, Maryland, which resulted in the loss of the use of his left hand. Under date of May 23, 1938, appellant filed a claim for compensation with the District of Columbia Compensation District of the United States Employees' Compensation Commission, under the Longshoreman's and Harbor Worker's Compensation Act, *supra*, made applicable to the District of Columbia by Act of May 17, 1928, 45 Stat. 600, Title 19, Chapter 2, Section 11, D. C. Code (1929), and thereafter requested a hearing, as in said Act provided, which hearing was granted and had with testimony taken before Deputy Commissioner Frank A. Cardillo on October 25, 1938 on the sole question of jurisdiction of the District of Columbia Workmen's Compensation Act.

Prior to filing the above claim with the District of Columbia Compensation District, counsel who represented the appellant in the State of Maryland filed a claim for compensation before The Maryland State Industrial Accident Commission, the duly authorized authority under the laws of the State of Maryland to receive and hear claims for injuries to persons which arise out of the course of their employment and to make awards therefore. In between the time it became necessary for appellant's counsel to file briefs with The Maryland State Industrial Accident Commission, he conceived the idea the case was properly one for District of Columbia jurisdiction and advised his client, appellant herein, accordingly (R. 30), **as the American Casualty Company was attacking the jurisdiction of the Maryland State Industrial Accident Commission, being the same insurance carrier now**

contending there is no jurisdiction under The District of Columbia Workmen's Compensation Act for the reason the accident happened in Maryland. The hearing was had before the Commission and on December 14, 1938, The Maryland State Industrial Accident Commission by its Order Number 244-234 rejected said claim for compensation made by this appellant, for the same injuries that claim has been made in the instant case, on the ground that said Maryland State Industrial Accident Commission was without jurisdiction to determine the case. A certified copy of that order is a part of the record in this case (R. 10).

Thereafter, on December 15, 1938 said Deputy Commissioner Frank A. Cardillo of the District of Columbia Compensation District made certain "Findings of Fact", as follows:

> "That on January 10, 1938, the claimant above named was in the employ of the employer above named, whose address is 301 LeBlond Avenue, Cheverly, Maryland; that on the said day the claimant herein, while employed as general manager for the employer, his wife, and while repairing a motor truck, sustained personal injury when his left hand became caught in the fan pulley of the motor, as a result of which he suffered fractures of the fingers of the hand; that on May 23, 1938, the claimant filed claim for compensation under the District of Columbia Workmen's Compensation Act and requested adjudication of his claim in accordance with the provisions of the said law; that the offices of the employer were formerly located in the District of Columbia, but that in December, 1937, the major part of the equipment of the business was moved to Cheverly, Maryland, although some operations, such as solicitations of business and deliveries, were continued in the District of Columbia; that at the

time of the injury the employer's business was conducted from Maryland and *that on the day of the injury the employee began his work at the employer's place of business in Maryland;** that both claimant and employer reside in Maryland and have so resided for the past four or five years; that the injury occurred in Maryland; that the injury was not one within the jurisdiction of the District of Columbia Workmen's Compensation Act." (R. 12)

And by Compensation Order in Case No. 10113-9 the Deputy Commissioner rejected the claim of appellant on the ground "That there is no jurisdiction under the District of Columbia Workmen's Compensation Act" (R. 12). From the above "Findings of Fact" and Order of the Deputy Commissioner the plaintiff under date of January 13, 1938 filed a Petition for Judicial Review of Deputy Commissioner's "Findings of Fact" under Section 21-B of the District of Columbia Workmen's Compensation Act (*supra*), in the District Court of the United States for the District of Columbia and designated in that Court as Civil Action No. 1314 (R. 1).

In his Petition for Judicial Review appellant set forth the following facts which are disclosed by the testimony in regard to the issue thus raised:

That in September 1937, Helen K. Moyer, wife of appellant, had certain money (R. 66, 70) and entered business trading as "Moyer Coal Company" (R. 33), employing her husband as a general manager at a certain salary (R. 33); that trading as Moyer Coal Company she entered into a lease for occupancy of 6301 Belair Road, N. E., District of Columbia, dated September 14, 1937 and expiring September 13, 1939

*Italics not part of order, but made by appellant's counsel.

(R. 63, 68, 69) (R. 102, 108, Claimant's Exhibit No. 7—Lease); that the nature of the business of the Company was the handling of coal, wood, fuel oil, and soliciting and making deliveries of these things (R. 33); that some of the deliveries were made in Maryland and Virginia, but the great majority of the operations of the Company were carried on and conducted in the District of Columbia (R. 33, 34, 65); that the Company employed four men in addition to appellant and that the contracts of employment took place in the District of Columbia (R. 33, 34, 63); that the Company owned four motor trucks (R. 63) which had District of Columbia automobile tags (R. 41, 63); that the Company had a District of Columbia coal dealer's license (R. 41, 63); that the Company was advised by a District of Columbia insurance inspector it would be necessary to carry compensation insurance if it was to continue in business in the District of Columbia (R. 35, 36, 37) and as result took out a policy of compensation insurance with American Casualty Company (R. 35) (R. 82 to 92—copy of policy—Claimant's Exhibit No. 1); that the property located at 6301 Belair Road, N. E., District of Columbia was foreclosed under date of November 5, 1937 (R. 38, 40) and bought in by National Savings & Trust Company; that Moyer Coal Company under date of November 11, 1937, was given a thirty day notice to vacate (R. 69, 109); that beginning in the middle of December 1937, the trucks of the Company were stored each night across the District Line in the rear of 5800 Rhode Island Avenue, Prince George's County, Maryland (R. 38, 60, 64), but they returned each day to the District of Columbia to be loaded and to make deliveries, (R. 38, 39, 58, 59, 60); that the Company continued operating from 6301 Belair Road, N. E., until January 15, 1938 (R. 39, 40,

41, 48), maintaining an employee constantly at the premises until January 15, 1938 (R. 48, 62), who looked after the mail, interviewed customers, took orders personally and by telephone, kept charge and carried on the business with the appellant (R. 39, 40, 50, 52, 60, 61, 62); that the usual business operations were continued in the District of Columbia until January 15, 1938, and the only physical change in the business was the storage of the trucks in Maryland (R. 40) when not making deliveries; that the keys to the premises were not turned over to National Savings and Trust Company, the then owners, until January 18, 1939 (R. 64); that on the morning of January 10, 1938 appellant was in the District of Columbia calling on customers having left his home in Maryland at 7:00 A. M., o'clock and went from the District of Columbia to where the trucks were stored in Maryland to help make repairs and start them so they could proceed to make deliveries in the District (R. 55, 56, 58, 59); that in endeavoring to get them started his hand was caught in a motor fan pulley and severely injured; that the trucks continued to work all the day of January 10, 1938, making deliveries in the District of Columbia (R. 59); that no testimony was offered by the other interested parties to refute the above facts.

Subsequently, on January 31, 1939, said Deputy Commissioner, through the United States Attorney for the District of Columbia, filed a Motion to Dismiss said Petition in the District Court and on February 27, 1939, the insurance carrier, American Casualty Company, by order of said District Court was permitted to intervene. On the same day the American Casualty Company filed an Answer to appellant's Petition and also a Motion to Dismiss said Petition. Thereafter, on the 7th day of December, 1939, the Motions to Dismiss

the Petition for Judicial Review were granted by Order of Court (R. 18). It is from this Order granting the Motions to Dismiss plaintiff's Petition for Judicial Review that this appeal is prosecuted.

III.

STATUTES INVOLVED.

Title 19, Chapter 2, Section 11 (Act of May 17, 1928, 45 Stat. 600, Chapter 612, Section 1), provides as follows:

> "That the provisions of chapter 18 of title 33 of the Code of Laws of the United States, including all amendments that may be made thereto after May 17, 1928, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs, except that in applying such provisions the term 'employer' shall be held to mean every person carying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person."

IV.

STATEMENT OF POINTS RELIED UPON.

That the Court erred in granting defendant's motion to dismiss plaintiff's "Petition for Judicial Review of Deputy Commissioner's "Findings of Fact" Under Section 21-B of District of Columbia Workmen's Compensation Act, wherein said "Findings of Fact" the Deputy Commissioner held there was no jurisdiction under the District of Columbia Workmen's Compensation Act.

V.

SUMMARY OF ARGUMENT.

1. The Deputy Commissioner's "Findings of Fact" and Order, rejecting petitioner's claim for compensation under Title 19, Chapter 2, Section 11 of the Code of Laws for the District of Columbia, upon the ground "That there is no jurisdiction under the District of Columbia Workmen's Compensation Act" is "not in accordance with law" because there is no substantial evidence upon which to sustain said order and said order is in error of law.

2. The District Court erred in sustaining the motions of the Deputy Commissioner and American Casualty Company to dismiss the petition for judicial review because the evidence and testimony shows that certain material findings of fact were not based upon substantial evidence and the order of said Deputy Commissioner was in error of law.

VI.

ARGUMENT.

I.

This Court has on numerous occasions stated that it will set aside an order of the Deputy Commissioner because "it is not in accordance with law", where it appears there is an error of law or in which the order of the deputy commissioner is not supported by substantial evidence. Mr. Justice Groner in *Burris* v. *Hoage*, 61 app. D. C. 228, 59 Fed. (2nd) 1042, on page 229 said:

> "It is first insisted that both the lower Court and ourselves are bound by the findings of fact of the deputy commissioner, but it is sufficient to say as

to this that we have many times held that, upon a review of the record made before the deputy commissioner, our duty is to determine whether his order was or was not in accordance with law, and this depends upon whether the testimony taken before the deputy commissioner will sustain his finding."

In *Powell* v. *Hoage*, 61 App. D. C. 99, 57 Fed. (2nd) 766, Mr. Justice Groner again speaking for the Court said:

"We therefore reach the conclusion that the cases in which we may set aside an order of the Commissioner as "not in accordance with law" are only those in which it appears that there is an error of law, or in which the order of the Commissioner is not supported by substantial evidence, as well, of course in those in which it is arbitrary and unreasonable."

To the same effect are the following cases:

Southern Railway Co. v. *Cartwright*,
64 App. D. C. 288;
77 Fed. (2nd) 546.

Cromwell v. *Benson*,
285 U. S. 22, 46;
52 S. Ct. 285;
76 L. Ed. 598.

Speaks v. *Hoage*,
64 App. D. C. 324;
78 Fed. (2nd) 208.

Hoage v. *Employer's Liability Assurance Corp.*,
62 App. D. C. 77;
64 Fed. (2nd) 715.

Employer's Liability Assurance Corp. v. *Hoage*,
63 App. D. C. 53;
69 Fed. (2nd) 277.

We are therefore asking a review of the evidence in this case for the purpose of determining whether or not the findings of fact and order of the Deputy Commissioner are based on substantial evidence and whether or not said order is in error of law. This determination we respectfully but earnestly submit requires an examination of the testimony taken before the deputy commissioner and his "Finding of Fact". By such an examination it will be apparent that the findings of fact are not based upon substantial evidence.

Appellant, as claimant before the Deputy Commissioner, testified as follows:

That he was employed as general manager for the Moyer Coal Company, which was owned and operated by his wife, Helen K. Moyer, at a salary of $75.00 per week (R. 33); that the contract of his employment, and that of four other employees, was made at 6301 Belair Road, N. E., District of Columbia (R. 33-34-63); that the Company was located at 6301 Belair Road, N. E., under a lease dated September 14, 1937 and expiring September 13, 1939 (R. 63-68-69) (R. 102-108 Claimant's Exhibit No. 7—Lease), and was engaged in the business of selling and delivering coal, wood and fuel oil (R. 33); that the Company had four trucks which were used to make deliveries in the District of Columbia, Maryland and Virginia (R. 34), but the majority of the Company's operations were carried on in the District of Columbia (R. 34); that on the morning of January 10, 1938, the day of his injury, appellant had started his work in the District of Columbia calling on customers, having left his home in Cheverly, Maryland at 7:00 A. M. o'clock and then went from the District of Columbia to where the trucks were stored in Maryland to help make repairs and start them so they could proceed to make deliveries in the District of Columbia

(R. 55-56-58-59) and it was in the course of starting said trucks that his hand was severely injured (R. 45-46). The testimony of appellant's wife, Helen K. Moyer, and Glenn Woodward substantiated these statements as an examination of the record will prove.

However, contrary to such evidence the deputy commissioner in his Findings of Fact stated:

> 1. "that on the day of the injury the employee began his work at the employer's place of business in Maryland."

Whereas the employee, appellant herein, testified that he began work on the day of the injury in the District of Columbia (R. 55-56-58-59) and was called to come into Maryland and fix the trucks.

> 2. "that at the time of the injury the business was conducted from Maryland".

Whereas from an examination of the testimony it is apparent that the business was being conducted from the District with the exception of the storage of the trucks in Maryland each night just across the District Line as well as some equipment (R. 64). Appellant also testified that on the day of his injury he had started work in the District of Columbia by calling on some customers (R. 55) and that sale and delivery of merchandise was carried on in the District until January 15, 1938 (R. 47-48),

> 3. "that in December, 1937 the major part of the business was moved to Cheverly, Maryland."

Whereas to the contrary there is no evidence that any equipment was moved to Cheverly, Maryland. The evidence tends to show that the only removal was the storage of some equipment and the trucks each night in

the rear of 5800 Rhode Island Avenue, Maryland, which is just across the District Line. However, the business continued to operate in the District of Columbia from 6301 Belair Road, N. E., until January 15, 1938 (R. 39-40-41-48)

> 4. "that the injury was not one within the jurisdiction of the District of Columbia Workmen's Compensation Act."

As to this conclusion it is respectfully submitted that under the provisions of Title 19, Chapter 2, Section 11 of the Code of Laws for the District of Columbia (1929), 33 U. S. C. A. 901 *et seq.* The District of Columbia Workmen's Compensation Act,

> "... shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person."

Appellant was an employee of such person as defined in the aforementioned provisions of Section 11 of the D. C. Code. Therefore, the conclusion of the Deputy Commissioner was an error of law and not based on substantial evidence. Likewise the order of the Deputy Commissioner based upon the aforesaid conclusion was also in error of law. The D. C. Code of Laws, Title 19, Chapter 2, Section 11, provides that "the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person." This definition is clear and there-

fore unless it would be possible to construe the evidence in this case as showing that appellant's wife, the employer, was not carrying on *any employment within the District of Columbia,* the injury was within the jurisdiction of the District of Columbia Workmen's Compensation Act.

Referring once again to the testimony it shows, that at the time of the injury to the appellant, The Moyer Coal Company maintained an office in the District of Columbia (R. 39-48), solicited business in the District (R. 48-50), maintained one Glenn Woodward in charge or the office until January 15, 1938 (R. 39-40-41-48); appellant had for a few hours prior to the injury been engaged in soliciting orders in the District for The Moyer Coal Company (R. 55) and was being employed as a general manager for the Company at that time (R. 33). It is respectfully submitted that the facts clearly show that Mrs. Moyer, trading as The Moyer Coal Company, was carrying on an employment within the District of Columbia. In the case of *Malloy* v. *San Jose Board of Education,* 102 Cal. 642, 36 Pac. 948, employment was defined as a "contract on the part of the employer to hire and on the part of the employee to perform service".

In view of such testimony there can be no doubt as to the fact that appellant was an employee and his wife an employer as defined in Title 19, Chapter 2, Section 11 of the D. C. Code (1929) and the deputy commissioner's findings of fact and order are not in accordance with law.

II.

Section 21-B of The Workmen's Compensation Law, Title 19, Chapter 2, Section 11, Code of Laws for the District of Columbia, 33 U. S. C. A. 901, *et seq.,* provides:

> "If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order." * * *

In view of the foregoing provision of the Act and the facts in this case previously discussed it is clear that the District Court erred in sustaining the motions to dismiss appellant's petition for judicial review under the aforesaid Section 21-B of the Act. This Court in the cases of *Burris* v. *Hoage, Powell* v. *Hoage, Speaks* v. *Hoage* and other cases, *supra,* has said that it may set aside an order of the deputy commissioner as "not in accordance with law" where it appears there is an error of law or in which the order of the commissioner is not supported by substantial evidence. It is submitted that the record made before Deputy Commissioner Cardillo does not sustain his findings and accordingly his order was not in accordance with law.

Upon a careful examination of the evidence in this case which was before the District Court two things are apparent. First, that certain material findings of fact are not based upon substantial evidence, *i.e.,* "that at the time of the injury the employer's business was conducted from Maryland and that on the day of the injury the employee began his work at the employer's place of business in Maryland, and that the injury was not one within the jurisdiction of the District of Columbia Workmen's Compensation Act". Second, that the order of the deputy commissioner rejecting appellant's claim on the grounds "That there is no jurisdiction under the District of Columbia Workmen's Compensation Act" was an error of law. In

view of what this Court has said in the cases previously cited the deputy commissioner's order was not in accordance with law. Therefore, the District Court should have remanded the case to the Deputy Commissioner of The District of Columbia Compensation District of The United States Employee's Compensation Commission with directions to entertain jurisdiction of appellant's claim and make such award as he may be entitled to under the aforesaid Act.

There is another factor to be considered in the determination of this case. Both the Maryland and District of Columbia Compensation Commissions have denied jurisdiction. There is no question of the fact that The Moyer Coal Company was an employer and that the appellant was an employee, nor that the company was conducting a going business. There is likewise, no question as to the fact that the appellant was injured in the course of his employment, nor of the further fact that the company had taken out compensation insurance from American Casualty Company for the protection and benefit of its employees. In view of the intention of Congress in creating compensation legislation for the District of Columbia to protect employees in such circumstances, appellant is entitled to compensation. It is contended that the appellant is entitled to a broad and liberal interpretation of Title 19, Chapter 2, Section 11 and that any doubt as to jurisdiction or compensability should be decided in his favor. The Courts throughout the entire country have broadly held that the compensation acts are to be interpreted in the light for which they were created so as to remedy the ills or evils which they were designed to remove.

The United States Supreme Court in the case of *Baltimore and Philadelphia Steamboat Co.* v. *Norton,*

284, U. S. 408, 414; 76 L. Ed. 366 said in referring to Compensation Acts that they

> "should be construed liberally in furtherance of the purpose for which they were enacted and, if possible, so as to avoid incongruous or harsh results".

This Court adopted that language in the case of *Associated General Contractors of America, Inc.* v. *Cardillo,* 70 App. D. C. 33, 106, Fed. (2nd) 327, and also in *Cardillo* v. *Liberty Mutual Insurance Company,* 69 App. D. C. 330, 331; 101 Fed. (2nd) 254.

This Court in the case of *Standard Accident Insurance Co.* v. *Hoage,* 62 App. D. C. 245, 247; 66 Fed. (2nd) 275, through Mr. Chief Justice Martin expressed itself in favor of a liberal interpretation of the compensation laws and commented on the fact that it should be observed that the language employed by Congress in the Act of May 17, 1928, applying the provisions of the Longshoremen's Act to the District of Columbia is *remarkably broad,* therefore indicating that the District of Columbia Workmen's Compensation Act is subject to a more liberal interpretation than other compensation acts. The Court said:

> "It has been repeatedly observed that the compensation laws are remedial in character, seeking to accomplish a humane purpose, and that their terms should be liberally construed. In Allen-Garcia Co. v. Industrial Commission, 334 Ill. 390, 166 N. E. 78, the Supreme Court of Illinois said that the 'definitions of 'employer' and 'employee' in Workmen's Compensation Act should be broadly construed.' In Texas Employers' Insurance Association v. City of Tyler, 283 S. W. 929, 932, 933, the Court of Civil Appeals of Texas said that:

> 'The Workmen's Compensation Act is regarded as a remedial statute, and should be liberally construed. * * * This liberality, we think, should not only be indulged in applying the remedies provided for, but in determining what legal entities may claim the benefit of those remedies.'
>
> "Moreover, it should be observed that the language employed by Congress in the Act of May 17, 1928 applying the provisions of the Longshoremen's and Harbor Workers' Compensation Act to the District of Columbia *is remarkably broad.* It provides that the former act 'shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia irrespective of the place where the injury or death occurs; except that in applying such provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person.''

Therefore appellant contends that the deputy commissioner's findings of fact are not supported by substantial evidence; that his order rejecting appellant's claim is not in accordance with law; that if there is any doubt as to jurisdiction it should be liberally construed in his favor and that the case should be remanded with instructions to entertain jurisdiction.

Respectfully submitted,

AUBREY ST. C. WARDWELL,
Attorney for Appellant.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED MAY 22 1940

Joseph W. Stewart
CLERK

IN THE

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v.

FRANK A. CARDILLO, Deputy Commissioner, United States Employees' Compensation Commission, District of Columbia Compensation District, and American Casualty Company, *Appellees.*

BRIEF FOR APPELLEE, AMERICAN CASUALTY COMPANY

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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BRIEF FOR APPELLEE, AMERICAN CASUALTY COMPANY

I.

STATEMENT OF THE CASE

The appellee, American Casualty Company, concurs with the statement of the case set forth in brief of appellant with the following exceptions:

1. American Casualty Company did not attack the jurisdiction of the Maryland State Industrial Accident Commission in the hearing on the claim filed with that Commission by appellant herein.

2. The statement on Page 6, Line 12 of appellant's brief that appellant's trucks had District of Columbia automobile tags is misleading as the evidence was to the effect (R. 41) that they also had Maryland tags.

3. The statement on Page 7, Line 1 of appellant's brief fails to disclose that the employer, Mrs. Moyer, testified (R. 67) that the employee referred to was only a caretaker and watchman, stationed to guard the property not yet moved (January 10, 1939) to Maryland.

II.

STATUTES INVOLVED

Article 101, Par. 30, Vol. 2, Bagby's Edition (1924), Annotated Code of Maryland, provides as follows:

> "No contract or insurance issued by a stock company or mutual association against liability arising under this Article shall be cancelled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; * * *"

III

SUMMARY OF ARGUMENT

1. American Casualty Company, appellee, did not attack the jurisdiction of the Maryland State Industrial Accident Commission in the hearing of appellant's claim before that Commission.

2. The Deputy Commissioner's "Findings of Fact" are predicated upon substantial evidence and are not subject to review.

3. The Deputy Commissioner's "Findings of Fact" and Order are in accordance with law.

IV

ARGUMENT

I

The brief of appellant filed herein seeks to confuse this Honorable Court in that it alleges that both the District of Columbia and the State of Maryland, acting through their respective Compensation Commissions, have held they are without jurisdiction over the injury sustained by appellant. It also alleges that American Casualty Company, appellee and insurance carrier, appeared before the respective commissions and contested the question of jurisdiction. Such is not the case.

The consideration of this claim both in the District of Columbia and Maryland was complicated by the fact that American Casualty Company had sent certain notices of cancellation of its insurance policy to the employer, said notices being sent because the insurance premium had not been paid. The Workmen's Compen-

sation Act applicable to the District of Columbia provides that thirty days' notice of cancellation must be given and the aforementioned notices of cancellation did not conform to the District of Columbia requirements. However, the compensation act of Maryland, supra, requires only ten days' notice of cancellation and American Casualty company took the position in the hearing before the Maryland Commission that, if it has been an insurance carrier for the employer at all, its policy had been cancelled before the happening of the injury complained of.

That such is the true state of the facts is borne out by the Order of the State Industrial Accident Commission (R. 10) in which the purpose of the hearing was stated thus:

> "(1) Was the American Casualty Company of Reading, Pa., a compensation insurer of the Moyer Coal Co. at time of happening of accident. (2) Should there be an award against American Casualty Company of Reading, Pa."

Claimant did not ask for an award against the employer for the very good reason that he in effect was the employer trading in his wife's name. All the State Industrial Accident Commission did was determine that American Casualty Company was not an insurer of the employer at the time of the accident.

To make the above assertions doubly true appellee takes the liberty of quoting here a letter received by its Maryland counsel from the State Industrial Accident Commission with reference to this matter:

"State Industrial Accident Commission
Equitable Building
Baltimore

May 14, 1940

Claim No. 244234
Case of Macon L. Moyer

Foster H. Fanseen, Esq.
461 Calvert Building
Baltimore, Md.

Dear Mr. Fanseen:

Replying to your letter of May 10, would advise that when claim was filed in the above mentioned case our files indicated that the employer did not have insurance, nor have we had any record of the Moyer Coal Company being covered by the American Casualty Company. As a matter of fact, we have no record of this employer except as a non-insurer in the above mentioned case.

Very truly yours,

(signed) ALBERT E. BROWN,
Secretary.

The above is respectfully submitted to clear any confusion which might result from statements made in appellant's brief.

II

Appellant, unsuccessful in attempting to obtain compensation in Maryland for the reason that American Casualty Company was not an insurance carrier of the employer in that state, and ignoring, for reasons the Court will well appreciate, his plain and undoubted right to an award in Maryland against the employer, appellant's wife, as a non-insurer, sought compensation in the District of Columbia, and now complains

because the United States Employees' Compensation Commission and the United States District Court for the District of Columbia have refused such compensation. Appellant is well aware of the long line of decisions to the effect that findings of the Deputy Commissioner will not lightly be set aside, decisions exemplified by *Voehl* v. *Indemnity Insurance Co. of North America,* 288 U. S. 162, 53 S. Ct. 380, 77 L. Ed. 676, wherein it is stated:

> "And when the Deputy Commissioner, following the course prescribed by the statute, makes such a determination, his findings of fact, supported by evidence, must be deemed to be conclusive", citing *Crowell* v. *Benson,* 285 U. S. 22, 52 S. Ct. 285, 76 L. Ed. 598, and *L'Hote* v. *Crowell,* 286 U. S. 528, 52 S. Ct. 499, 76 L. Ed. 1270.

None the less, appellant seeks by analysing fragments of the Deputy Commissioner's "Findings of Fact" to discredit those findings as in the following case: On Page 12 of appellant's brief the following quotation from the Deputy Commissioner's "Findings of Fact"

> "that on the day of the injury the employee began his work at the employer's place of business in Maryland"

is criticised with the statement that appellant testified that on the day of the injury he began work in the District of Columbia. As the Court will see from a reading of the Transcript (R. 55, 56, 58, 59) appellant testified that he left for the District of Columbia at 7:00 A. M. to solicit orders, that he was back in Maryland to fix the trucks at 8:00 A. M. That the solicitation of orders for coal between the hours of 7:00 A. M. and 8:00 A. M. is a highly irregular business procedure

was undoubtedly recognized by the Deputy Commissioner who properly gave what weight he thought advisable to the testimony taken before him, in accordance with the rule laid down by the Supreme Court of the United States in *Del Vecchio* v. *Bowers,* 296 U. S. 280, 56 S. Ct. 190, 80 L. Ed. 229, to the effect that a decision as to the weight of evidence made by the Deputy Commissioner may not be disturbed by the Court.

Other attacks by appellant on particular statements in the "Findings of Fact" of the Deputy Commissioner will be found on examination to be similarly devoid of support. It is submitted, therefore, that there is a proper factual basis in the testimony to support the said "Findings of Fact" and that the same may not, under the decisions of this Court and of the Supreme Court of the United States, be disturbed.

III

Appellant has not, as expected by appellee, argued that while the "Findings of Fact", based on substantial evidence, must be supported, the Deputy Commissioner's conclusions of law from those findings is erroneous. As such contention may be made at the hearing of this appeal it seems well to consider the matter briefly at this time.

In effect, appellant is asking this Court to rule that although appellant and the employer were residents of Maryland at the time of the accident, the business was being conducted in Maryland and the injury occurred in that state, the injury should be compensable in the District of Columbia. Ignoring the fact that there was no insurance coverage in Maryland and that claim was made in the District of Columbia for that

reason alone, appellant may argue that there is a question of conflict of laws to be resolved by this Court.

There is, of course, no such conflict for the Maryland Act has not been invoked against the employer, appellant's wife. However, assuming such a conflict, it is submitted that the decision of the Deputy Commissioner in declining jurisdiction was correct and cannot be disturbed.

Beginning with *Bradford Electric Light Co.* v. *Clapper,* 286 U. S. 114, 52 S. Ct. 571, 76 L. Ed. 1026, the Supreme Court has laid down the rule that the question of what state act relating to workmen's compensation shall control must depend largely on the policy of the state for the protection of its workmen. In *Ohio* v. *Chattanooga Boiler & Tank Co.,* 289 U. S. 439, 53 S. Ct. 663, 77 L. Ed. 1307, it was held that the state might, if it so desired, make its compensation act applicable to injuries arising outside the state where the facts were such that otherwise compensation would not be secured. This rule was further developed in *Alaska Packer's Association* v. *Industrial Accident Commission of California,* 294 U. S. 532, 55 S. Ct. 519, 79 L. Ed. 1044, where claim for compensation for an injury sustained in Alaska during seasonal employment was upheld under the California statute, against the defense that the Alaska statute should control. The facts disclosed that had claim not been allowed in California the plaintiff would have been without a remedy, as the nature of the employment would have effectively precluded the plaintiff from travelling to Alaska to press his claim. The Court said:

> "Indulging the presumption of constitutionality which attaches to every state statute, we cannot say that this one, as applied, lacks a rational basis

> or involved an arbitrary or unreasonable exercise of state power." * * *

and

> "It is unnecessary to consider what effect should be given to the California statute if the parties were domiciled in Alaska or were their relationship to California such as to give it a lesser interest in protecting the employee by securing for him an adequate and readily available remedy."

The substance of this line of decisions is that a state may, if a reasonable public policy dictates, give outside effect to its compensation laws, under certain circumstances, if it so desires. The decisions do not hold that a state will be forced by the Courts to give extra-territorial effect to its statute against its desire. The facts which the Court in the *Alaska Packers Case, supra,* held not to constitute an unreasonable extension of the state's power, namely, the domiciliary relationship of plaintiff to California and the physical impossibility of asserting a claim in Alaska, do not have a counterpart in the facts giving rise to this appeal. It is therefore submitted that even were there here a question of conflict of laws, the existence of which question is denied, the decision of the Deputy Commissioner was correct, that the policy of the District of Columbia, made manifest in his ruling, should not be disturbed.

Wherefore, the premises considered, appellee prays that the decision of the United States District Court for the District of Columbia, dismissing appellant's Petition for Judicial Review, be affirmed.

Respectfully submitted,

JOHN W. LIFF,
Attorney for Appellee,
American Casualty Company.